

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD GOSZTYLA,

Plaintiff,

v.

FRENCH, et al.,

Defendants.

No. 2:21-cv-01403-DJC-EFB (PC)

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On August 7, 2023, the undersigned filed findings and recommendations recommending that plaintiff's complaint be dismissed on the grounds it is time-barred. ECF No. 56. These findings and recommendations were served on all parties and contained notice that any objections to the findings and recommendations were to be filed within fourteen days. *Id.* Plaintiff filed timely objections to the findings and recommendations. ECF No. 57. The district court judge assigned to this matter subsequently ordered the parties to brief the impact of the Ninth Circuit's decision in *Mosteiro v. Simmons*, 2023 WL 5695998 (9th Cir. Sept. 5, 2023) on the issue of tolling. ECF No. 64. *Mosteiro*, which was filed after the undersigned's findings and recommendations, revised the tolling analysis regarding California Code of Civil Procedure § 352.1(a), the applicable law in this matter.

Based on *Mosteiro*, the district court judge found that plaintiff's complaint is timely, and referred the matter back to the undersigned to consider whether defendant Michael French is

1 entitled to summary judgment because he did not use force on plaintiff, an issue the parties  
2 addressed in their earlier briefing. ECF Nos. 52, 53, 54. The court hereby ORDERS the parties  
3 to file supplemental briefing solely addressing that question. The briefing should address any  
4 relevant caselaw filed since the initial briefing. Defendants shall file their supplemental briefing  
5 and exhibits (if any) on or before August 30, 2024. Plaintiff shall file his response briefing and  
6 exhibits (if any) on or before September 13, 2024. Defendant's reply shall be filed on or before  
7 September 20, 2024.

8 So ordered.

9  
10 Dated: August 15, 2024

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE